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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its June 11, 2013 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports / Officer Discipline Recommendation:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

- 12-057 / Salazar (Sustained – Deputy 1)

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (10)

ALLEGATIONS, FINDINGS & RATIONALE

12-054

1. Illegal Search & Seizure – Deputy 1 did not have probable cause to stop, detain, and/or arrest the complainant.

Board Finding: Action Justified

Rationale: The complainant was in violation of riding a bicycle in the middle of the roadway without a headlight. Upon being questioned, the complainant attempted to flee and Deputy 1 gave chase and used force to gain compliance. A search of the complainant's person incident to his arrest revealed narcotics and drug paraphernalia. The complainant subsequently pled guilty to these charges. The evidence shows the alleged act or conduct did occur and was lawful, justified and proper.

2. Excessive Force – Deputy 1 grabbed the complainant around the neck and punched him in the head unprovoked.

Board Finding: Action Justified

Rationale: When ordered to stop, the complainant attempted to flee. Deputy 1 called for cover and gave chase.

Prior to the arrival of other deputies, Deputy 1 endeavored to subdue the complainant using verbal commands, punches, head strikes, body weight, and a carotid restraint. For protection and to prevent escape, uses of force, including head strikes, are permitted by Sheriff's Policy & Procedures 6.47, Physical Force. The evidence shows the alleged act or conduct did occur and was lawful, justified and proper.

3. Excessive Force – Deputy 1 placed the complainant in a chokehold until unconscious and seizing.

Board Finding: Action Justified

Rationale: Deputy 1, who was alone, utilized a department approved chokehold technique to render the complainant unconscious for approximately five seconds. There was no evidence of seizure activity. The Use of Force Guidelines states that a carotid restraint may be used on subjects who are actively resisting and may be more effective than an impact weapon. The evidence shows the alleged act or conduct did occur and was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 failed to administer and/or contact medical personnel on scene, after utilizing force.

Board Finding: Action Justified

Rationale: The complainant did not exhibit any symptoms that would have required Deputy 1 to seek immediate medical attention from paramedics. In accordance with Departmental policy, the complainant was transported to Tri-City Hospital for evaluation and treatment. The physical examination revealed a 4 cm round contusion to the right frontal area and a small abrasion of the left anterior shin and nothing to suggest a neck or vascular injury. The evidence shows the alleged act or conduct did occur, but was lawful, justified and proper.

5. False Reporting - Deputy 1's Arrest Report "is full of lies and half-truths."

Board Finding: Action Justified

Rationale: The complainant had 11 areas of debate in his written statement contesting Deputy 1's Arrest report, but admittedly had no "hard evidence" to corroborate his beliefs. The investigation revealed contradictory evidence that did not support the complainant's assertions and/or discredited him. The evidence as currently known is lawful, justified and proper.

6. Criminal Conduct – Deputy 1 and a Carlsbad Police Officer weighed and/or recorded disparate amounts of Heroin.

Board Finding: Action Justified

Rationale: The complainant's Arrest report documented the following seized items: 17.3 grams of Heroin, burnt foil, four types of prescription pills, 0.2 grams of methamphetamine, one digital scale, and other miscellaneous items associated with the sale of narcotics. Deputy 1 said he followed protocol for confiscating, recording and placing evidence into storage. Due to the complainant's felony warrant, Police Officer X was contacted and requested an interview with the complainant who refused. Deputy 1 said Officer X was permitted to view the seized and bagged evidence. The evidence shows the alleged act did occur, but was lawful, justified and proper.

12-058

1. Criminal Conduct – Deputy 1 violated the complainant's civil rights and accepted bribes from members of a San Francisco Homosexual Hit Squad.

Board Finding: Summary Dismissal

Rationale: The complainant submitted a signed complaint, under penalty of perjury, for incidents during the period April 2012 to May 2013, which alleged numerous crimes by Deputy 1 of the San Diego Sheriff's Department, San Diego Superior Court officials, Metropolitan Transit System, San Diego County library staff, and other law enforcement agencies, to include: conspiracy, civil rights violations, and bribery. The complaint did not allege facts establishing a prima facie showing of criminal conduct, and the allegations are so clearly

without merit that no reasonable person could sustain a finding based on the facts. As such, it is referred to the Review Board for Summary Dismissal.

12-061

1. Misconduct Procedure –Deputy 2 failed to take a crime report.

Board Finding: Action Justified

Rationale: The complainant submitted an Inmate Request to file a crime report against a prosecutor for violation of PC § 1203.05, Inspection of Probation Report, related to an incident at the South County Court House. Deputy 2 reviewed the initial request and consulted with Deputy 1 of the Sheriff's Detentions Investigations Unit. Deputy 1 researched the alleged violation and determined that the Penal Code cited was a procedural rather than criminal, and advised that the matter should be addressed by the Courts. Deputy 2 responded to the complainant's Inmate Request and stated that the Sheriff's Department would not file a report. The complainant then submitted a grievance and requested that a report be taken, which cited among other violations, California Penal Code §11142, Unlawful Furnishing of Record by Authorized Person. Deputy 2 again declined to file a crime report because there had been no evidence that a crime had been committed. The evidence shows that the alleged conduct did occur but was lawful, justified and proper.

2. Misconduct Procedure –Deputy 1 failed to take a crime report.

Board Finding: Unfounded

Rationale: Deputy 2 contacted Deputy 1 of the Detentions Investigations Unit because of the unusual nature of the complainant's request. Deputy 1 conducted research into the matter and provided Deputy 2 with information from which to base his decision. The evidence showed that Deputy 1 was not in a decision-making position to accept or decline a crime report from the complainant, and the alleged act did not occur.

3. Misconduct Procedure – Deputy 2 failed to comply with department policy concerning Inmate Requests and Grievances.

Board Finding: Action Justified

Rationale: Deputy 2 accepted the complainant's May 14, 2012 Inmate Request Form which requested that a crime report be filed, and responded on May 15, 2012, per Detention Facility Services Manual of Policies and Procedures N.3, Inmate Request Forms. The complainant was advised that a crime report would not be taken. Not satisfied with the response, the complainant submitted a Grievance Form on May 16, 2012 and stated that the response and instruction to address the matter in court were not appropriate. Grievances, per Detention Facility Services Manual of Policies and Procedures N.1, Grievance Procedure, relate to disciplinary actions and/or conditions of incarceration. As such, the request was not a disciplinary action or condition of incarceration; it was handled again as an Inmate Request. Inmate Requests are not constrained to specific timelines for response, but are to be processed in an efficient and expeditious manner. Deputy 2 had responded to the complainant's request just one day prior and no new information had been submitted. Additionally, the complainant stated that he spoke with Deputy 2 on a number of occasions prior to receiving formal response to the request. The evidence shows that the alleged conduct did occur but was lawful, justified and proper.

12-073

1. Misconduct/Procedure – Deputy 2 refused to take a report regarding a threat against the complainant and his daughter's lives.

Board Finding: Not Sustained

Rationale: Deputy 2 reported that at no time did the complainant state to him that threats had been made against him and his daughter's lives, nor did he demand that a report be taken for any alleged threats. The complainant reported on-going drug use by his neighbor and several other neighborhood incidents, but never stated during

their phone conversation that his neighbor had made any statements or threats that were in violation of PC § 422, Terrorist Threats. The complainant and Deputy 2 offered competing recollections of their conversation, and absent an audio recording of this call, there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy – Deputy 2 stated to the complainant, “You’re shit out of luck,” or used words to that effect.

Board Finding: Unfounded

Rationale: Deputy 2 denied that he stated to the complainant, “You’re shit out of luck,” or used words to that effect. Deputy 1 was with Deputy 2 when he spoke by telephone to the complainant and denied hearing Deputy 2 use any profanities or speak inappropriately to the complainant. During a May 29th conversation with the complainant, Deputy 3 specifically asked the complainant what curse words Deputy 2 had allegedly used during their contact, and the complainant admitted at that time that Deputy 2 had not used any curse words, but had made him feel that he did not care. Lastly, during a meeting between Deputy 3, the complainant and a county official, the complainant again alleged that Deputy 2 had cursed at him. Deputy 3 reported that he immediately confronted the complainant regarding this allegation, and again the complainant retracted this allegation, admitting that Deputy 2 did not curse during their conversation. The complainant subsequently denied recanting this statement. This investigation raised several credibility issues related to the complainant, stemming from information he reported to CLERB, Sheriff’s Dispatch and Sheriff’s Deputies. This allegation is one such example and the preponderance of evidence showed that the alleged conduct did not occur.

3. Misconduct/Procedure – Deputy 4 refused to take a report regarding a threat against the complainant and his daughter’s lives.

Board Finding: Action Justified

Rationale: Deputy 4 was contacted by the complainant at the Alpine Station and described the complainant’s behavior as loud and confrontational. He demanded to know what had happened at his neighbor’s house earlier that evening and talked about several incidents that had taken place in his neighborhood over the years. The complainant told Deputy 4 about his argument with his neighbor, but never mentioned that the neighbor made any criminal threats. Per Sheriff’s Policy 6.71, Crime Case Reports, an ARJIS 2 Crime/Incident Report form is required for all felony and misdemeanor crimes and specific incidents. Per Deputy 4’s assessment, the elements of a crime were never completed absent a reported threat, and a report, therefore, was not required. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 3 yelled at the complainant, “Shut up and listen,” or used words to that effect.

Board Finding: Not Sustained

Rationale: Deputy 3 reported that the complainant was extremely upset when he contacted him, yelling and cursing throughout their conversation. Several times during the conversation, Deputy 3 told the complainant that if he continued to yell and curse at him, their conversation would be over. Despite the complainant’s behavior, Deputy 3 denied that he yelled at the complainant, “Shut up and listen,” or used words to that effect. Absent any audio recording or witnesses to this conversation, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Deputy 3 refused to take a report regarding a threat against the complainant and his daughter’s lives.

Board Finding: Action Justified

Rationale: Deputy 3 reported that during his contact with the complainant, the complainant specifically stated to him that his neighbor came to his door and told him to mind his own business. The complainant further stated that he and the neighbor exchanged curse words at his doorstep and then she left. At no point during their conversation, did the complainant state that his neighbor threatened him, produced any weapons, or entered his residence. Deputy 3 explained to the complainant the law regarding PC § 422, Terrorist Threats, and explained

that his neighbor had not violated that law. As such, Deputy 3 was not required to take a report and the evidence showed that the alleged act did occur, but was lawful, justified and proper.

12-084

1. Misconduct/Procedure – Deputy 1 would not allow the complainant to place his books with his personal property so they could be released to an outside party.

Board Finding: Action Justified

Rationale: The complainant submitted an Outgoing Property Receipt (J-54) requesting that 19 soft cover books be placed into his property for release to an outside party. Deputy 1 took possession of the 19 books, but was informed by a senior Corporal, and this information later confirmed by an Information Technician and a Property Clerk, that pursuant to Q.55, Property Received With Inmates, no bulk property (or weapons) could be accepted with an incoming inmate or for an inmate already in custody. The complainant's bag containing the 19 books exceeded the allowable dimensions and was justifiably refused. Deputy 1 returned the complainant's books to him and explained the policy's prohibition. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

POLICY RECOMMENDATION:

It is Board that the San Diego Sheriff's Department direct the review of Detention Facility Services Manual of Policies and Procedures to reconcile conflicting policies O.3 and P.3 related to the disposition of an inmate's excess property, particularly books and other reading material, to ensure the consistency and standardization of rules and regulations that govern this particular area.

12-114

1. Misconduct/Procedure – Deputy 1 denied the complainant access to the Courthouse for Jury Duty because of a tool utilized for his motorcycle.

Board Finding: Action Justified

Rationale: The complainant believed that a 4-inch Allen wrench should have been permissible inside the Courthouse. Deputy 1, the Hall of Justice Supervisor/Training Sergeant, recognized the item as being prohibited under three different sections of the Court Services Bureau Policies & Procedures Manual. The Court Services Bureau is required by order of the Superior Court to provide weapons screening at the designated public entrances to all county court facilities. The legal basis for the screening is a standing general court order of the San Diego Superior Court Presiding Department and Section 171(b) of the California Penal Code, which states in part, "All persons entering county court facilities are subject to screening." Deputy 1 performed his assigned job duties and was in compliance with Sheriff's Policy & Procedure F.06 Weapons Screening. Deputy 1's conduct was lawful, justified and proper.

12-116

1. Misconduct/Procedure – PO 1 failed to monitor and secure restitution payments from his probationer.

Board Finding: Summary Dismissal

Rationale: PO 1 retired in March 2013 and is no longer a member of the San Diego County Probation Department. The Review Board, therefore, no longer has jurisdiction over the subject matter of the Complaint. CLERB does not have authority to investigate this complaint based upon the following CLERB Rules & Regulations: Section 4: Authority, Jurisdiction, Duties, and Responsibilities of Review Board, Section 9: Screening of Complaints, and Section 15: Summary Dismissal.

2. Misconduct/Procedure – PO 1 failed to return the complainant's phone call.

12-122

1. Misconduct/Discourtesy – Deputy 1 told the complainant to “shut your mouth and quit crying” and/or “if you don’t shut up, I’ll roll you up and your back will hurt worse than it already does.”

Board Finding: Summary Dismissal

Rationale: The complainant was released from custody and failed to maintain contact with CLERB. His mother stated they were no longer interested in pursuing this matter. CLERB Rules & Regulations 5.7 Withdrawal of Complaint was applied.

(Please Note: Additional allegations against medical staff involving medical misconduct were referred to the Sheriff’s Department for investigation upon intake because the Review Board lacked jurisdiction.)

12-139

1. Misconduct/Procedure – Deputy 1 and/or 2 failed to provide escort and/or protect the complainant who was “assaulted” in a closed courtroom.

Board Finding: Unfounded

Rationale: A witness stated she and the complainant were escorted to their vehicles by a bailiff upon Simpson’s request for assistance. Deputy 1 also responded that escorts are provided upon request, although he had no personal recollection of this event in March 2012. The hearing involving the complainant was open to the public. For safety and security, court bailiffs do not allow the public to be alone in a courtroom. The complainant was never assaulted. The evidence shows the alleged act as reported by the complainant did not occur.

2. Misconduct/Procedure – Deputy 1 and/or 2 “detained” the complainant and allowed the suspect who assaulted him to leave.

Board Finding: Unfounded

Rationale: The complainant requested an escort to his vehicle because he did not feel safe and said there was a delay of approximately 10 minutes while his assailant fled. This situation was neither a detention nor an assault. No peace officer exerted or asserted their authority over the complainant by giving him orders, demanding answers, displaying a weapon, using a harsh tone, telling him to stop doing something or moving him to some other location. The complainant requested an escort and received it from a bailiff. Likewise, the complainant was never assaulted, which required an attempt to commit a violent injury to him. The evidence shows the alleged act as reported by the complainant did not occur.

3. Misconduct/Procedure – Deputy 2 refused to take an assault report requested by the complainant.

Board Finding: Action Justified

Rationale: Sheriff’s Policy & Procedure 6.71, Crime Case Reports, requires deputies to take reports related to assault crimes. An “assault” is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. There was never physical contact and/or injury between the complainant and anyone else, therefore no report was required. The complainant failed to produce his cell phone records for evidence. A search of 911 records did not produce any recordings and telephone calls at the San Marcos Station are not recorded. The evidence shows if the alleged act occurred as reported by the complainant, it was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 2 “ignored the complainant’s complaints and depositions” including Internal Affairs who did not respond to Simpson after a ten-month period.

Board Finding: Action Justified

Rationale: Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public. The complainant submitted a complaint to Internal Affairs on March 19, 2012. The complainant said he did not receive any correspondence from them until prompted by CLERB to re-contact them on January 23, 2013. Internal Affairs produced correspondence sent to the complainant on March 19, 2012, stating due to a pending criminal matter they were not taking action. The evidence shows the alleged conduct did occur and was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 2 failed to take action with regard to Mark Haines because he is a law enforcement officer.

Board Finding: Unfounded

Rationale: Mark Haines is not a Sheriff’s deputy and therefore there is no basis for preferential treatment by Court Bailiffs. The evidence shows the alleged act or conduct could not occur.

13-001

1. Illegal Search & Seizure – Deputy 1 knocked three times, entered a motel room and searched without the complainant’s permission.

Board Finding: Action Justified

Rationale: While on routine parole, Deputy 1 encountered a probationer, in an area known for drug activity. Deputy 1 arrested the probationer in the motel parking lot. Deputy 1 then went into her hotel room with her key, to conduct a fourth waiver search. Deputies 1 and 2 encountered the complainant in the room who also had a fourth waiver. This provision legally allowed deputies to enter the motel room and conduct a search. The evidence shows the act did occur and was lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 1 suggested that an inner tube was shoved up the complainant’s anus causing another deputy to laugh at the naked complainant.

Board Finding: Not Sustained

Rationale: The complainant was undressed when deputies entered the motel room, but after a security search, Jordan was permitted to don his pants. Deputy 1 said he observed and inquired about an inner tube that looked out of place in the room, but denied statements regarding the complainant’s anus. Deputy 2 did not recall the rubber tube or making derogatory comments in reference to the complainant. There is insufficient evidence to either prove or disprove this allegation.

3. Misconduct/Discourtesy – Deputy 1 made sexual comments about pornography and/or kinky sex concerning the complainant and/or his partner who he also referred to as a “Cougar.”

Board Finding: Not Sustained

Rationale: The complainant was viewing pornography when deputies entered the motel room. Deputies 1 and 2 both denied making any discourteous statements during their encounter with the complainant or using the slang term of Cougar in reference to the complainant’s partner. There is insufficient evidence to either prove or disprove this allegation.

4. False Arrest – Deputy 1 arrested the complainant for smoking meth.

Board Finding: Action Justified

Rationale: The complainant told Deputy 1 the most recent time he smoked meth was “last November,” but then

was forthcoming admitting it was earlier that day. Deputy 1 found a coated glass pipe with methamphetamine next to the complainant. Deputy 1's evaluation of the complainant determined he was intoxicated and the complainant was placed under arrest for being under the influence of controlled substances and possession of paraphernalia. The evidence shows the actions were lawful, justified and proper.

End of Report